

Clymer (M.)

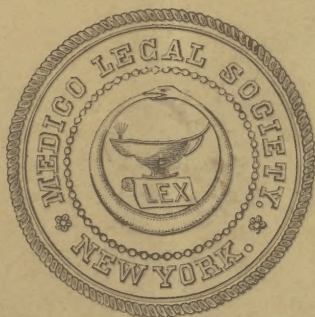
THE  
LEGITIMATE INFLUENCE OF EPILEPSY  
UPON  
CRIMINAL RESPONSIBILITY

BY

MEREDITH CLYMER, M.D. (UNIV. PENN.),

*President of the New York Society of Neurology and Electrology; one of the Vice-Presidents  
Society of the Alumni of the Medical Department of the University of Pennsylvania;  
formerly Physician and Consulting Physician to the Philadelphia Hospital;  
Ex-Professor of the Institutes and Practice of Medicine in the  
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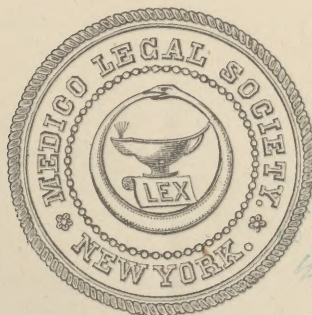
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# THE LEGITIMATE INFLUENCE OF EPILEPSY

UPON

## CRIMINAL RESPONSIBILITY.

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By MEREDITH CLYMER, M. D.\*

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THERE is great unanimity in the testimony of writers on epilepsy, that it exercises, in its lesser as well as in its more classical form, a pernicious influence on the mental faculties of its victims. I believe that in every case of epilepsy there is some modification of mental tone.

That the existence of this malady is not incompatible with extraordinary intellectual power is not to be denied. I have myself known many examples, and there are several familiar stock cases cited by authors, the most remarkable being those of Cæsar, Mahomet, and Napoleon Bonaparte. The imperial biographer of the great Roman captain denies that the two nervous attacks which he had, one at Cordova and the other at Thapsus, were fits of genuine falling sickness. There is no real proof that the first Napoleon was subject to epilepsy, whilst there is much to discredit it. But where genius and epilepsy have co-existed, there have been always, so far as my knowledge and experience go, a nervous constitution, eccentricities of thought and ways, and which, sooner or later, have developed into some form of mental disease. The late Professor Trousseau said, in one of his lectures on

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\* Read by invitation before the Society, May 11, 1871.

this subject,—“ If there have been epileptics who, in spite of more or less frequent attacks, have retained to the end of even a pretty long career, not only the perfectness of their reason, but also the full force of their intellect, and like those men of genius, whose names history has handed down to us, preserved that superior intelligence which enabled them to rise above the ordinary level of their fellow-men, instances of this kind are too exceptional to invalidate in the least the general law. In the large majority of cases, although in the beginning and when the attacks are infrequent, the patients are in the full possession of all their faculties; although a marvellous aptitude for conceiving things quickly, or viewing them under their most brilliant and poetical aspects, may distinguish some of them, yet in proportion as the fits recur and increase in frequency, in proportion as the disease progresses, the faculties fail, and become gradually extinct, and insanity follows.”

Children, who in after life become epileptic, are often remarkable examples of precocious cleverness; they are bright, quick, full of imagination, and have astonishing memories, but are apt to be shy, tetchy, quick in quarrel, and liable to sudden gusts of temper. These unnatural gifts too are not lasting; the promise of the child is not fulfilled; he becomes stupid, morose, fearful, and blustering. The early cerebral exaltation is the evidence of the morbid germ which later is to be known by its fruit.

Of 339 epileptics, Esquirol found 269, or four-fifths, with some form of mental disorder, leaving only one-fifth in the enjoyment of their reason, and he exclaims, “ What sort of reason?” The celebrated French alienist, Falret, observes: “ It is certain that very many cases of epilepsy are accompanied by some disorder of the intellect which has a decided analogy to that met with in a large number of the chronic diseases of the brain. This trouble is as natural a consequence of the principal disease as those partial paralytic attacks so frequent after epileptic fits, and should not be separated from the affection on which it depends. We have cases of mental derangement accompanied by epileptic vertigo, or genuine



convulsive attacks ; which are chiefly characterized by their short duration, intermittent type, outrageous exhibitions of passion, and by hebetude and want of memory after the paroxysms ; cases so distinctive in their character as to warrant the name of epileptic insanity.

In most instances an uneasy, depressed, and irritable state of the mind immediately precedes an attack, and there is constantly some disturbance of the affective and intellectual faculties manifest directly after it, which may persist during a large part or the whole of the interval between the fits. The affective faculties chiefly suffer. The disposition is apt to be moody, suspicious, wayward, spiteful, and wrathful. Offense is readily taken ; there is a fancy to tease and annoy, and to be troublesome ; and a dread of insult or injury. The moral qualities are perverted, and the sense of propriety, decency, and duty obscured or lost.

The physical derangements to which the epileptic is liable are exhibited under varied expressions. In many cases there is gradual failure of intelligence ending in total mental annihilation ; others show anomalies of character and disposition which hardly go beyond harmless eccentricities of conduct, or at most, involve a change of temper and habits ; in some there may be an extreme perversion of affective life, and occasional explosions of automatic temper-fits, in which he loses the knowledge of himself, but is generally content to unpack his mind in words—

———— tantum maledicit utrique, vocando

Hanc, Furiam ; hunc, aliud, jussit quod splendida bilis ;

or there may be those terrible outbursts of maniacal fury, accompanied by homicidal or suicidal impulses, or both.

We must admit, too, that epilepsy may be manifested, at least for a while, by some mental disorder alone, constituting the *masked epilepsy* of Morel, and for which I prefer the term *psychical epilepsy*.

These psychical perturbations are characterized by sudden and irresistible impulses often of the most dangerous character, and their disposition to manifest themselves in convulsive action is curious and interesting. They are distinctive in

their character, and are, sometimes, the only objective indication of the disorder. Though of so much importance to the psychologist and medical-jurist, they have not received the attention they merit, but little notice being taken of them by the majority of authors, whilst a few have made them the object of particular study.

Maudsley well remarks: It is not so clearly understood that the mental derangement so occurring may have the form of profound moral disturbance with homicidal propensity without manifest intellectual arrangement. This writer points out the frequency of these precursory phenomena in children who subsequently become epileptic. He says, children three or four years old are sometimes seized with sudden fits of shrieking, desperate stubbornness, or furious rage, in which they bite, tear, and destroy whatever they can lay hold on; these may occur periodically, and may either pass in the course of a few months into developed epilepsy, or alternate with epileptiform attacks, representing a vicarious epilepsy.

From the large number of cases, personal and collected, of which I have notes, I shall select a few, for the purpose of illustrating the several varieties of mental disturbance to which epileptics are liable. It should be borne in mind that the morbid psychological phenomena of which I am treating may happen before, at the time, or immediately after, the epileptic seizure; that they frequently replace it, and may be manifest only so long as the regular fits are absent.

Marc mentions a case of vicarious epilepsy in a peasant, twenty-seven years of age, who had been subject to epilepsy since he was eight years old. At twenty-five, the convulsive attacks ceased, and he then began to have irresistible homicidal impulses. Often for days before he felt the warnings of a coming access, when he would beg to be confined, that he might be prevented from committing a crime. "When the feeling comes over me," he would say, "I must kill some one, if only a child."

In the commune of Cravent, Loiret, France, lived the family Piednoir, consisting of a man and his wife, sexagenarians, and their son, aged twenty-seven, an epileptic. Except



some extravagant ideas, the young man had shown no signs of mental derangement, and had always been affectionate towards his parents. On Easter Sunday, he had had three epileptic seizures; that night he suddenly, and as quietly as possible, got out of bed, armed himself with some weapon at hand, and going to his mother, who slept in the same room with him, killed her with a single blow. He then went into the adjoining room, where his father was asleep, and killed him too. He next attempted to force his way into the adjoining house, but its inmate made her escape, and by her cries aroused the neighbors, who, coming to her aid, tried to secure the murderer, but he eluded them, and proceeded to the house of a brother-in-law, a mile or two off, where he remained awhile, but made no mention of his deed. He returned home, barricaded himself in the house, and was only finally secured by a ruse. After he had become quiet, he confessed his crimes, the manner of their perpetration, etc.

A lady, forty-eight years old, had had two attacks, accompanied by violent acts and threatening language, at intervals of eighteen months. For some time after her admission to Dr. Morel's asylum he was quite undecided as to the state of this patient's mind, she was so calm, rational, and industrious. There was not the slightest evidence of any mental disturbance. One day, however, she suddenly began to use threatening language, and very soon followed the menace by an overt act of violence, and it became necessary to shut her up. So violent was this attack of rage that she was no longer recognizable, and it was impossible to believe that it was the same woman who, only the evening before, was considered a model of gentleness and good behavior. After some days she resumed her duties with her usual willingness and good-humor. Other attacks followed; the fits became more frequent, and after a while her character began to change, and during the lucid intervals she was apt to be irritable and easily provoked.

At the meeting last summer of the Association of Medical Superintendents of American Institutions of the Insane, Dr. John P. Gray, of Utica, mentioned the following case:

A man was tried for the murder of his wife. The plea of

insanity was put in, but the counsel having given their entire attention to the fact of insanity, and little or none to the question of epilepsy, the evidence presented did not warrant the experts in considering the case one of insanity or irresponsibility. During the progress of the trial the prisoner had a well-marked epileptic seizure. Dr. Gray sat beside him at the time, and sent a note to the judge that the accused was unconscious of what was going on. The court immediately adjourned; no witnesses were examined subsequently; the jury found a verdict of guilty, but sentence was not pronounced. The prisoner was committed to an asylum by a later investigation before a county justice, on the ground that he had been an epileptic, was then an epileptic, and was therefore a person of doubtful responsibility. He remained in the asylum for several years, had epileptic fits, and became quite deranged. Subsequently, he had an attack of fever, and regained his mental vigor; he was detained several years longer, but had no return of his epilepsy. By the repeal of the law under which he was convicted he was discharged. Dr. Gray added that he has since followed the case, that the man had conducted himself well, is earning a livelihood, and is now neither insane nor epileptic.

I will quote here another instructive case, which attracted a good deal of attention in England three years ago, where the man was tried, condemned, and about to be executed, without any suspicion on the part of his counsel of his condition.

Bisgrove was an illegitimate child, badly cared for from his birth, and had been always of weak health and intellect. For several years he suffered from frequent epileptic fits, in consequence of which, and his inability to take care of himself, he was discharged from the colliery where he worked. In the intervals between his fits, he was good-natured and amiable, and liked by his companions, but immediately after one of them he was dangerous, seizing upon anything that might be at hand, and ready to attack those near. Hoping that a sea-voyage might do him good, he shipped, but returned after a few months, unimproved. He is represented as having had the heavy, lost look so common in the confirmed



epileptic. Such was his condition when, one evening, after drinking a little, he saw a man unknown to him lying asleep in a field; he took up a big stone which was by and dashed out the sleeper's brains. Having done this he lay down by the side of his victim, and went to sleep. When he awoke he was taken into custody, tried, defended by counsel assigned at the last moment by the court, who said not one word about this creature's epilepsy, and was condemned, along with a perfectly innocent man, who was charged with being an accomplice, and who gave a perfectly true account, as it appeared afterwards, of his whereabouts and doings on the night of the murder, but was not believed. Soon after sentence, Bisgrove made a confession, exculpating his supposed accomplice. A clergyman, struck with the strange character of the murder, made inquiries about the prisoner's former life, found out that he was an epileptic, and had proper representations about the case made to the Home Secretary; a medico-judicial inquiry brought out the facts; a reprieve was granted, and Bisgrove was sent to Broadmoor, the English asylum for insane criminals.

Dr. Reeves, of Wheeling, West Virginia, sent me last autumn the following interesting case, which I will briefly relate.

F. W. D., æt. 34, born of healthy parents, of good constitution, and of quick intellect. At the age of twenty he had already shown so much ability as a business man that he was put at the head of very extensive iron works as manager, and conducted them successfully during the next eight or ten years. After assuming his arduous duties, he had a sudden seizure of momentary loss of consciousness, there was a vacant stare, and he staggered for an instant. Soon afterwards he suffered from a severe attack of typhoid fever, accompanied by delirium and stupor. He was dangerously ill for four weeks. Three months after his recovery, he had another transient attack of vertigo and loss of consciousness; and the seizures from this time became more frequent, until five years after his first "vacant stare," when he suddenly fell senseless to the ground, and was convulsed—in other



words, he had a regular epileptic fit. Two years before this he had married, and was to all appearances in full health. Two years after, having had in the meanwhile several seizures of more or less severity, he began to complain of loss of memory, and his constant forgetfulness annoyed him. About this time, his friends noticed a change in his disposition, and that he had become very irritable and impatient. In December, 1863, that is about seven years after his first seizure of *petit mal*, he had a very severe epileptic fit which lasted for more than a hour, and on getting out of it, he took up an old violin which he had occasionally before played on, and, instead of using the bow, he "picked" on it, banjo-fashion, unremittingly for twenty-four hours, an old tune he had learned in his boyhood. The fits now happened every three or four weeks, of variable intensity, to April 4, 1870, each one being followed by an uncontrollable impulse to make hurried music of the same old tune, from twelve to forty-eight hours. During this exercise he took neither food nor drink. At such times he could not be interfered with without the risk of producing fits of violent and unmanageable rage; and if, on his demand, he was not instantly given some musical instrument, his fury was terrible. His friends never allowed him to go from home without putting into his pocket a jew's-harp, on which, after an attack, he would quietly play his favorite air, so long as he was not interfered with.

The fits invariably came on at midnight, and during the next twelve hours he would have as many as a dozen; for the next twelve to forty-eight hours he continued busy with his music, neither eating, drinking, nor sleeping, and then, sometimes, for thirty-six hours he might be a raving maniac, who could be coaxed but not coerced. On one occasion, when his father attempted to thwart him, he fell on him, and nearly choked him to death. At another time he was taken to the station-house in Baltimore, for resisting a policeman who had interfered with him. He once rushed into a court-house in Maryland, to the astonishment of the bench and jury, and tried to arrest sentence of death which was being pronounced on a negro, and he was sent to prison for contempt of court.

For several hours immediately preceding a fit his memory is wonderful, and he will then after reading anything once, repeat page after page, scarcely making a mistake.

His general health is good ; he sleeps well in the intervals of the fits ; reads a good deal, particularly religious books, but, with the remarkable exception just mentioned, forgets everything almost as soon as read ; is fond of company, delights in cards and dancing ; is an immoderate water-drinker as well as smoker. His only complaint is of occasional pain in the right side of the head, and at such times his face is flushed.

He has had two children by his marriage ; the eldest had an attack of convulsions when five years old.

No treatment had had any influence upon the disorder.

In a letter lately received from Dr. Reeves, he informs me that this unfortunate man had become a violent lunatic, and had been sent to an insane asylum.

Dr. Thorne Thorne, of London, has lately published a case well worthy of mention, on account of the peculiar psychological symptoms, which, in a measure, replaced the ordinary convulsive attacks.

H. S., a coach-builder, æt. 36, and of temperate habits, had, fourteen years previous to the present history, been exposed to the sun's rays for some time, and suffered from severe pain in the head for three weeks afterwards. After a rheumatic illness three years subsequently, the pain returned, and he had never been free from it for any time since ; he had, too, occasional attacks of dimness of sight and trembling. He married, and became the father of several children. Nine or ten years after his partial sunstroke he had several well-marked epileptic fits, and they continued increasing in frequency until he had one on an average every third week. Up to this time in the clinical history we have nothing but a well-marked case of epilepsy ; about this time a train of morbid mental phenomena appeared. Whilst in hospital for a slight bronchitis, he is reported to have become "strange in manner," and to have had some delusions. One night he suddenly jumped out of bed, rushed wildly to the door of the

ward, which he quickly opened, and then fell to the ground on his back. He was picked up and carried to his bed; he seemed to retain consciousness, but gave no explanation of his conduct. During his stay in the hospital, which was about a month, he was liable to these attacks, that is, spells of mental excitement, associated with delusions and followed by periods of depression. In the intervals he was cheerful, his manner was calm, and he was always ready to make himself useful. Before his admission into the hospital he had never had any mental symptoms, but during the next two years they frequently recurred in a very marked form. He had occasionally suffered from spells of mental depression, but these gradually were transformed into paroxysms of acute mental excitement. In these attacks he becomes suddenly wild, his intellect is confused and he will snatch up a knife, and declare aloud that he is going to kill his children, rushing after them into the closets, etc., where, terror-stricken, they may hide. After his wife has removed everything with which he might do himself or others harm, and locked up with him trying to pacify him, more than once it has required all her strength and tact to hinder him from throwing himself out of the window. After remaining in this state for several hours, and sometimes for an entire night, he will gradually get quiet and go to sleep. On awaking, he has but a dim recollection that he has in any way been ailing, and none whatever of what he has said or done during the seizure. These attacks are preceded by the same warning symptoms as his regular epileptic fits, namely, a sensation of cold and trembling.

It is also stated that this man subsequently became a subject of kleptomania. On one occasion, when it was noticed that he was suffering from a good deal of mental dullness, several parcels of violet and other scented powders were discovered on his person, which he could have had no object in purchasing, and about which he positively declared he knew nothing. Later, he was arrested for stealing his fellow-workmen's tools, which had been found in his possession. He most emphatically asserted that he had not taken the



articles. His well-known honesty and previous history favored the notion that the theft had been done during an access of epileptic vertigo. On medical evidence to that effect being given, the charge was withdrawn, and he was released. The medical officer of the prison who examined him, however, was unable to state that he could at that time find any indications of mental unsoundness, although, having heard of his former attacks, he said that he could not doubt that such indications had from time to time manifested themselves. This man is unquestionably liable during an access of his disorder to commit some serious criminal act. It will be remembered that his first morbid impulsive act was to rush madly, and apparently without purpose, to the door of the ward of the hospital, and he might just as well have made a motiveless, murderous attack upon a fellow-patient.

A few weeks ago, a lad, about ten years of age, was brought to me with the following history. In infancy he had had two severe attacks of convulsions, but nothing of the kind since. He was the youngest of a family of several children, of whom some were grown up, and all bright except this boy. His intellect did not develop, and he made small progress at school. Some two years since, twitchings of his hands were noticed; he kept them in constant motion, as well as the muscles of his mouth; about this time he became irritable in his temper, and, when reproved or thwarted by his mother, would get very angry, use bad language, which, it was stated, was not habitual with him, and throw anything that he could seize at his mother, and then run off, staying away for a while. On his return home he was always very penitent, expressed much contrition for his conduct, would burst into tears, beg to be forgiven, and promise to sin no more. Later it was noticed that everything eatable which came into his way he would appropriate, gorging himself till he became sick. The state of the article made no difference with him, and just before I saw him he had had a severe attack of illness from eating a quantity of rotten apples and spoiled peanuts which had been thrown into the street. He soon, too, began to pick up and put in his pockets everything he saw and could conveniently stow

away. At night he would empty his day's pilferings into a drawer, never thinking of looking after them again unless he was questioned about any missing article, and asked if he had it, when, if such were the case, he would immediately go and fetch it. With the exception of articles of food, he was never known to use, or convert into money, anything which he might have taken. Indeed, after his pockets were sewn up, he would carry openly in his hands his spoils. His mother had become fearful that his habits might get her into trouble and applied for advice. Regarding the motory troubles, taking the whole history of the case, as more of an epileptic than of a choreic nature, and that his impulse to steal was really irresistible, and his fits of rage might lead him to the commission of some dangerous act, I advised his being immediately sent to an asylum. Whilst he was under examination, and his mother was stating the case, I noticed that his expression of countenance suddenly changed, and that his face was quite pallid. I asked if this happened often, and I was told that he was angry at what was being said about him, and that one of his temper-fits was working in him; that he was restrained by my presence, otherwise that he would seize hold of the first thing handy, and "shie it" at his parent. A little while afterwards he began to sob violently.

It is undeniable that frequently the epileptic seizures happen only during the night, and may be so slight as to be overlooked. The nature of the mental troubles following these nocturnal attacks may, from this fact being overlooked, not be understood, and mistakes made fatal to the liberty or even life of the individual.

Dr. Duménil relates an instance in point. A soldier subject to sudden fits of passion was tried by court-martial for striking an officer. A medical inquest showed that he had had slight attacks of periodical mania. A long while afterwards, Dr. Duménil discovered that each of these attacks was preceded by epileptic fits during the night, of which the man had no knowledge, and which had escaped the notice of those who for several years had slept with him. The same physician mentions that several of his patients had passed several years in

asylums before the real nature of their infirmity was made out.

Morel mentions the case of a boy at a boarding-school, who was suddenly attacked during the night without apparent cause ; he rushed wildly up and down the hall of the dormitory, shouting and gibbering loudly, and seized one of his fellow-pupils who was trying to quiet him, and attempted to strangle him. After some difficulty he was secured and put to bed, when he had an epileptic fit. The next morning he recollected nothing that had happened, but complained of feeling weary and exhausted.

About a year ago I was consulted by a middle-aged gentleman, who told me of his troubles as follows : Without warning or any immediate provocation, he would suddenly have the most horrible homicidal impulses towards certain persons who either really, or at the moment he imagined, had injured, or slighted, or offended him. In his room, or in the street, or crossing a public square, the fit instantly seized him, and fancying the supposed evil-doer before him, he would strike at him with some fantastic murderous weapon—stabbing him in the neck, or breast, or belly with a sharp instrument, or giving a blow on the head with a blunt one, the act being accompanied with the most violent, reproachful language. He said he was not aware that in the street, or when any one was present, the gestures or speech were more than subjective ; but if alone he knew that he spoke aloud, and suited the words to the action. The fit over, he always felt very much exhausted, with more or less loss of muscular power, particularly recently, of the left extremities. Although occasionally in the company of some of the menaced persons, he had never at such time felt any disposition to harm them, or to behave towards them in any way that showed the feelings he at periods involuntarily experienced regarding them ; but he was tormented by the apprehension that the time might come when he would be attacked whilst in their presence, and thus commit some horrid crime. He was a man of high moral tone and Christian training and practice, irritable, subject to temper-fits from childhood, but naturally of an amiable and generous dis-



position. He was greatly distressed at his infirmity, had for some time concealed it, and at last, dreading the possible consequences, sought advice. He said he had more than once decided to go voluntarily to an asylum, but was withheld from the fear of exposure and injury to his prospects and family. I found out in the course of my examination that he had had also at times suicidal thoughts, or, rather, that more than once the idea of the effects of the several methods of self-murder had been, as he said, irresistibly obtruded on his mind, and particularly the sensation of a discharge of a pistol in his mouth ; but, as he observed, he had never seriously meditated at any time suicide ; it was rather, as he called it, an æsthetical contemplation of the means of self-destruction, without any especial desire to practically test them on himself. Although he had had many vexations from pecuniary losses and general bad luck, he was usually cheerful, not cast down by, nor given to brooding over, his troubles, and performed the daily duties of his calling, which did not demand any very great mental strain, easily and creditably. He had no headache, and his general health was excellent. After one of these spells his left arm would feel weary and his left leg weighted, along with some numbness and tingling in the parts ; these sensations would soon pass off. He had had neuralgic attacks occasionally for many years, but they had become lighter and rarer. He never had suffered from epileptic fits, or, as he thought, anything like them ; nor had any of his family. One day he asked me to prescribe something for a sore tongue, and on examination I found evidence of its having been bitten, which led me to believe that he was subject to nocturnal attacks ; and, on being questioned, he admitted that often before falling asleep he had remarked that his jaw snapped, and sometimes his limbs jerked. I looked upon these phenomena, apparently so insignificant, as really the key to the psychical troubles, and the effects of treatment have tended to confirm the opinion.

He remained measurably free from his mental disorder for many months ; a few days ago he returned to me, saying that he was nearly as bad as ever.

An epileptic may have his attacks at long intervals and immediately after one of them have an irresistible disposition towards some criminal act, and then become apparently sane. Here we may have no indication to account for the morbid impulses if the antecedents are not known, or are overlooked; and an error in such cases is very possible if we form a judgment only by the present condition of the accused.

The following case happened about a year since in Missouri, and at the time excited much attention and gave rise to a sharp discussion about its medico-legal merits. The general facts are: Max Klingler, a boy about eighteen years of age, was a tailor's apprentice to his uncle. The day preceding the homicide his uncle had reproved him concerning his work, and also about the removal of a pistol from a drawer. The next morning, while the uncle was making a fire in the stove, Klingler approached him from behind, and putting the muzzle of a pistol close to his head, fired, and killed him. The wife of the murdered man on rushing into the room on hearing the shot, was seized by the boy, who struck her several blows on the head with a hatchet, which rendered her insensible. The murderer then took what money there was in the drawer, about thirty dollars, and ran for the railway depot, and such was his haste that he did not stop to pick up his hat which had been blown from his head in the street during his flight. Taking a train that was leaving for the West, he was arrested at a station a few hours afterwards, his hands and clothes being covered with blood. At the coroner's inquest he made a confession, admitting that he had killed his uncle because he had made him angry, and was not pleased with his work. He said that he had made up his mind on the previous Saturday to shoot him, and added that when he came down stairs on the morning of the murder, he bade his uncle good-morning as usual, but received no answer. He said that he then went to work and opened the shutters, and when he came back to the room, he saw his uncle making the fire, and, without saying anything further to him, shot him from behind. He further stated that when coming down

stairs he had no intention of shooting him, but had loaded the pistol in the garret. The prisoner was tried and convicted. A new trial was moved for on the ground of important depositions having been received from his native town in Germany, which showed (1) that Klingler, in early childhood, while playing in a barn had had a fall from a height of thirty feet, which had rendered him insensible with a wound of the head, which had caused a depression of the skull still apparent; (2). that since his fall he had been subject to fits, and on several occasions had suffered from temporary insanity; (3.) that his mother and sister and two daughters of the latter had been subject to epileptic seizures, and that the daughter of a maternal aunt was insane.

Another trial was had, and the jury not agreeing, there being seven for conviction and five for acquittal, a third one took place, and Klingler was again convicted. His counsel, having failed to secure a reversal by the Supreme Court of Missouri, took an appeal to the Supreme Court of the United States, the result of which is not stated in the report of the case from which I have made my abstract.

Admitting the fact established, that Klingler was an epileptic, and that his disorder was hereditary, it was contended by the prosecution that he was not seen in, or known to have had, a fit for many years previous to the act. It is true that a fellow-prisoner who slept with Klingler testified that he had acted very strangely, waking up and seizing the witness by the throat, seeming wild, strange, and bewildered. If such was the fact, there was possibility of nocturnal epilepsy, and Klingler should have been closely watched during sleep for many nights. In Dr. Bauduy's medico-legal report of the case I can find no evidence that the alleged depression at a point of the skull had been verified by any of the medical witnesses who had examined the prisoner, or that there was any proof that previously or subsequent to the murder, Klingler had had anything like an epileptic fit, except the doubtful evidence of his fellow-prisoner. In a statement which he wrote subsequent to conviction he, with much shrewdness, throws all the responsibility for the crime on his epileptic disorder. He shows much



adroitness in his plea, and such perfect memory about all the details of the deed, that I will quote a portion of it. "This event would not have happened," he writes, "if I had not received the sickness just on the 29th of November, [1869, the day of the murder], for I did not think that I would get the sickness on account of all these troubles. I had often said it in German that I would get the sickness about this time, and nobody should enter the room until I unlocked the door myself, for I get so crazy that I do not know what I am doing. It is dangerous for any one to be seen by me when I get the sickness. The doctor in Germany said to my parents that I would become dangerous during my sickness. I am very sorry that I was so unfortunate. I had the sickness on the 25th November, and unhappily the boss entered; I saw him; he came toward me and looked at me, when I struck at something. Then I saw that he wanted to come at me, and wanted to hold me, so I got so intensely crazy that I did not know what I was doing. How I got the revolver in my hand I do not know, nor how he lay there. Then she [the wife] ran towards me and wanted to strike me. I did not know with what I struck her. But when I came to my senses I saw what I had done, and was scared. Then I left immediately. If I had premeditated this I would have sent my clothes to some place. I kept the pistol by me every morning, because we had in our neighborhood about ten Indians. Every morning I was first in the store and was afraid of these fellows." This account of the assassination by the murderer himself, an alleged epileptic, with the avowed object of extenuating the deed by the fact that he was undergoing a paroxysm at the time, shows, admitting the correctness of the occurrence as given by him, which is not the case, for it conflicts with the evidence, is at variance with the statement made by him at the time of his arrest, and is evidently distorted to his own advantage. Admitting, I say, its truth, it proves perfect recollection of all the circumstances attending the murder, and is so ingeniously constructed as to weaken very much the theory of mental disorder from any form of epilepsy, which it attempts to substantiate, and it has all the appearance of a

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lie coined after the plea of epilepsy had been imagined to avoid the consequences of his temper-fit. He had avowed on his first examination *premeditation*; he told the coroner that he "had made up his mind to kill his uncle the night before." Professor Bauduy, in his ingenious argument in favor of Klingler's irresponsibility, on the ground of his alleged epileptic attacks in Germany, argues in extenuation of the supposed premeditation, that "Klingler felt a morbid impulse the previous evening to kill his uncle, but through the supremacy of his will, coupled with intellectual power not wholly impaired, he was able to resist or correct such impulsive tendency. He did not kill his uncle until the following morning, after his usual salutation, and subsequently had opened the store for the day's business. Would not an ordinary criminal, premeditating his crime, have perpetrated the act during the darkness and stillness of the night, when his victim would have been completely at his mercy? Would he have courted publicity by opening the shutters in daylight, almost inviting the attention of passers-by on a greatly frequented thoroughfare? Then, again, what motive existed to incite the boy to such a terrible crime?" The argument, I confess, seems to me fallacious, and is urged more after the manner of a clever advocate supporting a specious theory, than a calm appreciation of the facts of the case. From the evidence before me, I am satisfied that Max Klingler was justly convicted of a premeditated murder, and was properly amenable to the penalty incurred. What the final result was, and whether the sentence was executed, I have not learnt.

In this connection the case of the Belgian, Rœgiers, may be cited here. Although the fact of epilepsy was admitted by the prosecution, the fact of premeditation having been established, the prisoner was held responsible for his act, and condemned accordingly.

Rœgiers was thirty years of age at this time; he had been subject to epileptic fits for three years, the consequence of sudden fright. After awhile the seizures were attended with attacks of maniacal fury. He had a foreknowledge of the onset, and would warn those about him. The fit over, he was

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himself again, quiet and gentle, with no recollection of what had happened. The seizure was usually during the night, and whilst the fit was on him he would struggle violently. Rœgiers had had a quarrel with a companion, in consequence of which he had been sent for some months to prison. On quitting the prison he assured B\*\*\* that he had no grudge against him, as he was not responsible for the act of the court. Some time afterwards Rœgiers was seen quietly sharpening a knife on a grind-stone for over two hours, exclaiming from time to time, "I'll have your head." He left his house in broad daylight, knife in hand, and ran to the house of B., who lived in a populous quarter, and entered boldly. B. seeing Rœgiers come in armed with a knife, attempted to escape, but was pursued by Rœgiers, who struck a blow at B.'s sister while attempting to shelter her brother; reaching the latter, he threw himself on him like a tiger, and inflicted a terrible gash in his throat, thrusting in his fingers to enlarge the wound. The terrified bystanders refused any assistance until Rœgiers fell exhausted. Tried at the Brabant Assizes, he was condemned to death. He had no recollection of the horrid deed he had perpetrated, answering all the questions of the judge: "Since you say so, I suppose it is so, but I know nothing of it." Subsequently his sentence was commuted to the galleys for life and one hour in the pillory. Whilst he was undergoing the latter part of his sentence he was seized with a terrific attack of convulsions.

At the beginning of this paper I expressed the opinion that the mind of the epileptic is rarely, if ever, whole; though, unquestionably the alteration may be of a kind and degree not to affect either the moral or legal responsibility of the individual. But an epileptic dwells on the border line of insanity, and may, at any moment, pass the limit, and live there forever. We may in these cases have the whole gamut of insanity sounded from mere irascibility and capriciousness of thought, feeling, and conduct, to the most terrible explosions of maniacal fury.

The question then arises: Are all epileptics who have committed a criminal act to be considered necessarily as insane,



and consequently irresponsible? Should the proof of being subject to epilepsy alone insure acquittal? I do not believe that the simple fact of an individual being subject to epilepsy will ever come to be admitted by legists as naturally divesting him of responsibility for his acts; and the medical expert who maintains such a doctrine runs the risk of seriously compromising himself. In some cases, as I have said, the state of mental deterioration or perversion is such as not to admit of question; lasting traces of the disease leaving its mark on the mind. Again we meet with epileptics who are fulfilling all the duties of life, and whose real condition is not suspected; it is hard to assert that these persons are absolved from moral responsibility. We should be wrong then in always arriving at the conclusion that an epileptic is necessarily deprived of moral liberty, and therefore may claim immunity from the consequence, of a criminal act. He may, in committing the offense, have obeyed some interested motive, and there may have been criminal premeditation, and at the time of the act full power of self-control, so that he could have refrained from the act had he liked so to do. There may be, then, no small difficulty in distinguishing the responsible criminal from the irresponsible lunatic. The mere fact of the commission of extravagant and vicious acts by an epileptic is not sufficient to divest him of responsibility, and secure to him immunity for his acts. There must be proof and demonstration, beyond reasonable doubt, of his inability to control his vicious instincts. It must be shown, to quote Mr. Erskine's language, that "the act in question is the immediate unqualified offspring of the disease." And we should always have in mind that we are bound to protect the rights of society as well as the rights of individuals. A general plea of insanity should not therefore absolutely protect every epileptic against the consequences of his act. A careful inquiry is to be made into the circumstances of each case, and the evidence thoroughly sifted. The period of the seizures should be learned; whether near to or remote from the time of committal of the act charged; the slowness or rapidity with which the seizures are recovered from; the mental state during the intervals—are all

to be fully considered before you can decide whether the accused has been the victim of horrible imaginings, or yielded to a criminal suggestion of his free will.

Many of these unfortunates are quite aware of and appreciate their terrible infirmity; they have a correct notion of right and wrong, but cannot control or resist their morbid impulses. They may have a foreknowledge of what will inevitably happen, and beg to be protected against themselves. Marc tells of an epileptic who, after being several times in an asylum, decided to remain there permanently, for his seizures were commonly preceded or followed by transitory fury, and he several times had attempted to kill his wife and servants. These mental impulses are not always irresistible, and may for a time be successfully opposed, but are liable at any moment to be transformed into acts against all the efforts of the will. After a criminal deed the epileptic may use this language: "I was urged on, something forced me, in spite of myself; I understood full well the atrocity of the act I was about to commit. I resisted for a while with all my might, but the time came when the horrid impulse mastered me. I had no power over myself, and had to yield to the horrible suggestion. No sooner was the act done, and I was myself again, than I saw it in its true light; I realized all the consequences, and was horror-stricken at what I had done; I lament my weakness, but I feel that my will had nothing to do with it."

Now, if the legal test of responsibility—the full knowledge of right and wrong at the time of the act—be applied to such cases, most monstrous injustice would be done, and yet this has been the English law since it was laid down by Lord Hale, and is constantly quoted by leading authorities. As Professor Laycock remarks of this bloody-minded persecutor of old women: "He disregarded in his *dicta* alike the principles of pathology and of common sense, and of ethics founded thereon."

I know that the theory of "irresistible impulse" has but little favor in courts of law, and, perhaps, with good reason. It has too often been the plea of those who, as Edgar tells us,

“when sick in fortune make guilty of their disasters the sun, the moon, and the stars; as if they were villains on necessity; fools by heavenly compulsion; knaves, thieves, and traitors by spherical predominance; drunkards, liars, and adulterers by a forced obedience of planetary influence; and all that we are evil in by a divine thrusting on. . . . An admirable evasion of the surfeit of our own behavior.”

And yet I cannot but believe,—when the doctrine comes to be properly understood,—that in certain cases of epilepsy the mind is, as it were, conditioned to insanity; that the faculty of the will may be smothered for a time; that the individual so afflicted is not responsible as a free agent; and, when discreetly and properly urged, the plea will meet with recognition.

Until quite lately the notion of mental disease, which has been most generally held, and is still the doctrine of the law-courts, is that insanity is an intellectual and not an emotional disorder. The validity of this view was first questioned by Dr. Bucknill, and he attempted many years ago to establish the important principle that morbid emotion is an essential part of all affections of the mind. “With the exception,” he writes, “of those cases of insanity which arise from injuries, blood poisons, peripheral irritations, and other sources of an unquestionably physical nature, the common causes of insanity are such as produce emotional changes, either in the form of violent agitation of the passions, or that of a chronic state of abnormal emotion, which exhibits itself in the habitually exaggerated force of some one passion or desire, whereby the healthy balance of the mind is at length destroyed. From these and other reasons, from the definite operation of the reasoning faculties, and their obvious inability to become motives for conduct without the intervention of emotional influence, and also from the wide chasm which intervenes between all the legal and medical definitions of insanity founded on the intellectual theory and the facts as they are observed in the broad field of nature,—the conclusion appears inevitable that no state of the reasoning faculty can, by itself, be the cause or condition of madness, congenital idiocy and acquired



dementia being alone excepted. The corollary of this is, that emotional disturbance is the cause and condition of insanity. This is especially obvious in the periods during which the disease is developing. Disorders of the intellectual faculties are secondary; they are often, indeed, to be recognized as the morbid emotions transformed into perverted action of the reason. In no cases are they primary and essential."

In a late text-book on Insanity, Dr. Blandford insists strongly on the importance of the emotional trouble. "This emotional alteration," he says, "points not to a disturbance of one portion of the brain, but to a morbid condition of the whole nervous system of the highest significance."

Finally, the question comes up as to the length of time before and after a seizure, that an epileptic should be considered as irresponsible before the law. Zacchias has laid it down that every epileptic should be held as irresponsible for any criminal act he may commit three days before and three days after a seizure. I think, from what has been said in this essay, that no absolute rule can be laid down, and that each individual case must be considered on its own merits, and the different circumstances under which the several forms of mental troubles in the epileptic may be developed must be borne in mind.\*

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\* It has always been a question in legal medicine, within what period before or after a fit an epileptic can claim immunity for a criminal offense. In cases of this kind, bearing in mind the cases that have been recorded, are we able to fix upon such a period? Is there any time when the epileptic can be considered as clearly free from the pathological effects of the disease? Can he ever commit a crime without being entitled to excuse? At any rate the criminal acts of epileptics should ever be regarded by the expert with great distrust, and receive the most exhaustive investigation. I think he is bound to accept the single alternative, either that the patient has entirely recovered beyond the reach of the epileptic disease, or that he is, in some degree of probability, still suffering from it. He is clearly entitled to the benefit of every doubt (Dr. Isaac Ray—*Proceedings of the Association of Medical Superintendents of American Institutions for the Insane. American Journal of Insanity* for October, 1870).











# PAPERS

READ BEFORE THE

## Medico-Legal Society of New York,

*From its Organization in 1868, to January, 1873,*

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Appendix.—Constitution and By-Laws of the Medico-Legal Society.